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Attorneys for Defendant  
BANK OF AMERICA, N.A.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

JENNIFER YICK, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and DOES 1-20,  
inclusive,

Defendants.

Case No. 3:21-cv-00376-VC

**DEFENDANT BANK OF AMERICA'S  
RESPONSE TO PLAINTIFFS' MOTION TO  
CONSOLIDATE RELATED CASES AND TO  
APPOINT LEAD COUNSEL AND EXECUTIVE  
COMMITTEE**

Courtroom: 4 – 17th Floor  
Judge: Hon. Vince Chhabria

Complaint filed: January 14, 2021

**This document also relates to:**

Case No. 3-21-cv-00494-VC

CARLOS RODRIGUEZ, on behalf of himself  
and all others similarly situated,

Plaintiff,

Judge: Hon. Vince Chhabria

1	v.	Complaint filed: January 20, 2021
2	BANK OF AMERICA, N.A.,	
3	Defendant.	
4	<b>This document also relates to:</b>	Case No. 3:21-cv-00547-VC
5	J. MICHAEL WILLRICH, on behalf of himself	
6	and all others similarly situated,	
7	Plaintiffs,	Judge: Hon. Vince Chhabria
8	v.	Complaint filed: January 22, 2021
9	BANK OF AMERICA, N.A., and DOES 1-20,	
10	inclusive,	
11	Defendants.	
12	<b>This document also relates to:</b>	Case No. 3:21-cv-00572-VC
13	LINDSAY MCCLURE, on behalf of herself and	
14	all others similarly situated,	
15	Plaintiff,	Judge: Hon. Vince Chhabria
16	v.	Complaint filed: January 25, 2021
17	BANK OF AMERICA, N.A., and DOES 1-20,	
18	inclusive,	
19	Defendants.	
20	<b>This document also relates to:</b>	Case No. 3:21-00615-VC
21	ROLAND OOSTHUIZEN and ROSEMARY	
22	MATHEWS, on behalf of themselves and all	
23	others similarly situated,	
24	Plaintiffs,	Judge: Hon. Vince Chhabria
25	v.	Complaint filed: January 26, 2021
26	BANK OF AMERICA, N.A., and DOES 1-30,	
27	inclusive,	
28	Defendants.	
29	<b>This document also relates to:</b>	Case No. 3:21-cv-00699
30	ROBERT L. WILSON, on behalf of himself and	
31	all others similarly situated,	

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Plaintiff,  v.  BANK OF AMERICA, N.A., and DOES 1-20, inclusive,  Defendants.
<b>This document also relates to:</b>  CHRISTOPHER MOSSON, on behalf of himself and all others similarly situated,  Plaintiff,  v.  BANK OF AMERICA, N.A., and DOES 1-50, inclusive,  Defendants.
<b>This document also relates to:</b>  CLARA CAJAS, on behalf of herself and all others similarly situated,  Plaintiff,  v.  BANK OF AMERICA, N.A., and DOES 1-20, inclusive,  Defendants.

Judge: Hon. Vince Chhabria  
Complaint filed: January 28, 2021  
  
Case No. 3:21-cv-00743-VC  
  
Judge: Hon. Vince Chhabria  
Complaint filed: January 29, 2021  
  
Case No. 3:21-cv-00869-VC  
  
Judge: Hon. Vince Chhabria  
Complaint filed: February 3, 2021

1 Defendant Bank of America, N.A. (“Defendant” or “BANA”) submits this response to  
2 Plaintiffs Jennifer Yick, Roland Oosthuizen, and Rosemary Mathews’ (together, “Plaintiffs”)  
3 Motion to Consolidate Related Actions, Appoint Cotchett, Pitre & McCarthy, LLP and Altshuler  
4 Berzon LLP as Interim Co-Lead Counsel, and Proposed Executive Committee (the “Motion”).

## 5 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 6 **I. Introduction**

7 The lawsuits that Plaintiffs seek to consolidate (as well as several pending in other  
8 districts) relate to massive fraud targeting California’s unemployment benefits program that  
9 surged at the height of the COVID-19 pandemic. At a time when millions of Californians and  
10 other Americans had lost their livelihoods and were relying on government assistance to make  
11 ends meet, legions of criminals were exploiting this unprecedented crisis to target government  
12 agencies like the California Employment Development Department (“EDD”), resulting in  
13 hundreds of thousands of instances of fraudulent unemployment benefits claims, as well as  
14 unauthorized access to unemployment benefits that had been distributed to legitimate claimants.  
15 BANA, which had been retained by EDD to distribute unemployment benefits to qualifying  
16 residents through prepaid debit cards, worked closely with EDD to address the diversion of sorely  
17 needed unemployment benefits into the hands of criminals. BANA, in collaboration with EDD,  
18 has taken a number of actions, such as freezing suspicious debit card accounts believed to have  
19 been either the product of or affected by fraud, and establishing a series of fraud-prevention  
20 measures to identify suspected fraudulent activity.

21 Plaintiffs do not dispute that fraud occurred or that it was rampant; indeed, Plaintiffs  
22 allege that they, too, were victims of fraudulent and unauthorized activity on their accounts. *See,*  
23 *e.g., Yick* Compl. ¶¶ 39–41. Instead, Plaintiffs blame BANA for the fraud, while at the same time  
24 alleging that EDD’s and BANA’s fraud-prevention efforts were overbroad, resulting in some  
25 legitimate accounts being frozen due to suspicion of fraud. *See, e.g., McClure* Compl. ¶ 20;  
26 *Willrich* Compl. ¶ 59.

27 Because the eight putative class actions that Plaintiffs seek to consolidate involve similar  
28 claims and facts, BANA agrees that consolidation for pre-trial purposes (including discovery,

dispositive motions, and class certifications) is appropriate. However, BANA believes it would be premature to consolidate these matters for trial, as discovery will likely reveal a number of factual differences between the claims of each individual plaintiff that may make a consolidated trial unduly cumbersome or prejudicial.

With respect to Plaintiffs' proposal for an executive committee, BANA does not believe that a committee is necessary under these circumstances, where all of the cases to be consolidated involve a number of overlapping facts (except those specific facts that are relevant to each plaintiff's individual account and/or transactions) and issues of law. Allocating responsibilities among ten different firms<sup>1</sup> would defeat the purpose of consolidation, as the efficiencies achieved by consolidation could easily be outweighed by the *inefficiency* of having ten firms involved in strategy and decision-making.

## **II. The Cases Should Be Consolidated for Pretrial Purposes Only**

BANA agrees that consolidation of these putative class actions is appropriate for pretrial purposes, given that each involves BANA's efforts to protect against the large-scale fraud directed at EDD and legitimate recipients of unemployment benefits. Each of the eight lawsuits raises issues concerning BANA's delivery of EDD benefits and its efforts to combat that fraud, such as freezing debit card accounts suspected of fraud, and responding to claims of fraudulent transactions. Therefore, discovery will no doubt overlap significantly, as each set of plaintiffs will likely seek to depose BANA regarding the same or similar issues. Class certification and dispositive motions in each case will also likely raise similar legal issues, as the claims asserted by each set of plaintiffs largely overlap, and plaintiffs propose to certify a similarly defined class in each case.

However, each plaintiff's case may ultimately turn on the facts specific to their claim, such as any evidence of fraud surrounding each account or transaction in dispute, and whether accounts and any claims made on the accounts are legitimate. In addition to class certification issues such differences may raise, it may not be appropriate to consolidate these eight cases for

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<sup>1</sup> Plaintiffs ask the Court to appoint two firms as interim Proposed Lead Counsel, and eight other firms to serve on an executive committee.

1 trial, where a consolidated trial could end up being eight separate mini-trials. Therefore, while  
2 BANA agrees that pre-trial consolidation is appropriate, BANA requests that the Court decline  
3 (for now) to issue a ruling with respect to consolidation for trial, in order to allow the parties to  
4 confer regarding this issue after discovery, class certification, and dispositive motions have been  
5 completed, and to submit additional briefing at that time if agreement cannot be reached.<sup>2</sup>

### 6 **III. An Executive Committee Is Not Necessary in This Case**

7 BANA does not oppose the appointment of Cotchett, Pitre & McCarthy LLP and  
8 Altshuler Berzon LLP as interim Co-Lead Counsel. And although it takes no issue with the  
9 qualifications of the other firms in Plaintiffs' proposal, BANA does not believe that an eight-firm  
10 executive committee is necessary or appropriate here, where the cases to be consolidated all bring  
11 substantially similar legal claims, and a multi-tiered committee could lead to numerous  
12 inefficiencies and likely significantly increased costs.

13 First, Plaintiffs do not point to any differences between the eight lawsuits that would  
14 necessitate an eight-firm executive committee—or any committee at all. “Committees are most  
15 commonly needed when group members’ interests and positions are sufficiently dissimilar to  
16 justify giving them representation in decision making.” *Manuel for Complex Litig.*, § 10.221.  
17 The fact that there is more than one group of plaintiffs “is irrelevant if Plaintiffs’ interests are not  
18 divergent or dissimilar.” *Aberin v. Am. Honda Motor Co., Inc.*, 2017 WL 3641793, at \*2 (N.D.  
19 Cal. Aug. 24, 2017). Courts within this circuit routinely deny requests for appointment of  
20 executive committees where a plaintiff fails to demonstrate that such an appointment is necessary.  
21 *See, e.g., Aberin*, 2017 WL 3641793, at \*2 (finding three-firm committee unwarranted where  
22 “Plaintiffs have neither addressed nor demonstrated that the interests of the class diverge or are  
23 dissimilar”); *Kamakahi v. Am. Soc. for Reprod. Med.*, 2012 WL 892163, at \*3 (N.D. Cal. Mar.  
24 14, 2012) (declining to appoint a three-firm executive committee where plaintiff did not

25 <sup>2</sup> On February 8, 2021, BANA filed a Notice of Pendency of Other Actions or Proceedings  
26 Pursuant to Local Rule 3-13 (Dkt. No. 22), notifying the Court of two actions pending in the  
27 Central District of California: (1) *Chong v. Bank of America*, 2:20-cv-10052 (C.D. Cal. Nov. 2,  
28 2020) (Aenlle-Rocha, J.); and (2) *Zoelle et al. v. Bank of America, N.A.*, 2:21-cv-00518 (C.D. Cal.  
Jan. 20, 2021) (Olguin, J). In addition, BANA wishes to alert the Court of a third matter pending  
in the Eastern District of California that may involve similar questions of law and fact: *Wiggins v.*  
*Bank of America, N.A.*, 2:21-cv-00319 (E.D. Cal. Feb. 18, 2021) (England, J.).

1 “identif[y] any diverse interest among the parties”); *Nicolow v. Hewlett Packard Co.*, 2013 WL  
2 792642, at \*9 (N.D. Cal. Mar. 4, 2013) (declining to appoint an executive committee); *In re*  
3 *Cathode Ray Tube (CRT) Antitrust Litig.*, 2008 WL 2024957, at \*2 (N.D. Cal. May 9, 2008)  
4 (concluding that there was “no need for an executive committee at this time”); *In re 5-Hour*  
5 *Energy Marketing v. Innovation Ventures, LLC*, 2013 WL 12134144, at \*2 (C.D. Cal. Nov. 8,  
6 2013) (concluding “it does not appear that there are different types of claims that could best be  
7 pursued by separately-appointed counsel.”).

8 Plaintiffs have pointed to no divergence or dissimilarity in interests between the various  
9 groups of plaintiffs or the proposed classes. *See Aberin*, 2017 WL 3641793, at \*2 (where there  
10 are no divergent interests between the groups of plaintiffs, “an executive committee is not  
11 necessary to protect class members’ interests in decision-making”). Indeed, it would be difficult  
12 for Plaintiffs to do so, given that many of the current complaints contain lengthy sections that  
13 appear to have been literally (and liberally) cut and pasted from one another. *Compare, e.g., Yick*  
14 *Compl.* ¶¶ 1–6, 14–40, 46–54 *with Cajas Compl.* ¶¶ 1–6, 14–40, 46–54. Similarly, many of the  
15 complaints describe the same proposed class. *Compare Yick Compl.* ¶ 68 *with Wilson Compl.*  
16 *¶ 34 and Willrich Compl.* ¶ 66.<sup>3</sup> Given that it initially appears as if each named plaintiff falls  
17 within the proposed class definitions in all of the complaints, these cases could have been brought  
18 as a single lawsuit, managed by one set of class counsel, with no need for a committee.<sup>4</sup>

19 Second, it is difficult to see how the interests of efficiency and economy would be served  
20 by the appointment of a committee. It is well known that “[c]ommittees of counsel can  
21 sometimes lead to substantially increased costs” and “unnecessary duplication of efforts.”  
22 *Manuel for Complex Litig.*, § 10.221. Indeed, Judge Breyer denied the appointment of a multi-  
23 firm executive committee proposed by the Cotchett firm in part because of “the tendency of

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25 <sup>3</sup> Plaintiffs themselves contend that “all of the related actions are brought against Bank of  
26 America on behalf of substantially the same proposed class” and “involve the same defendant and  
27 similarly defined classes, raise virtually identical legal and factual issues, and seek the same or  
28 substantially similar relief.” Motion Brief at 1, 2.

<sup>4</sup> In addition, Plaintiffs all reside in California and the related cases were brought in the same  
district. Thus, the proposed executive committee members will play no “role in navigating any  
differences due to jurisdiction, location, and law” that might justify their appointment. *Mack v.*  
*LLR, Inc.*, 2018 WL 6038349, at \*5 (C.D. Cal. Jan. 31, 2018).

1 shared leadership structures to complicate, muddle, and otherwise bloat litigation.” *Nicolow*,  
2 2013 WL 792642, at \*9. The cumbersome eight-firm executive committee proposed by Plaintiffs  
3 (in addition to two firms serving as Proposed Lead Counsel) would similarly complicate, muddle,  
4 and bloat this litigation. Under the proposed structure, there would be more law firms involved in  
5 the litigation than there are cases to be consolidated—an overly complicated arrangement that  
6 would undermine the very purpose of the proposed consolidation, creating numerous  
7 inefficiencies and adding significantly to the costs of both sides. The costs of coordination alone  
8 (e.g., conference calls and e-mails between Proposed Lead Counsel and the firms on the proposed  
9 executive committee) could far exceed the efficiency-savings of consolidation. It makes little  
10 sense to consolidate eight cases only to turn around and divvy up responsibilities between just as  
11 many different firms.

12 Plaintiffs cite to just three instances in which a court appointed a large multi-firm  
13 executive committee like the one they propose. *See* Motion Brief at 13–14. But all three cases  
14 are multi-district litigations that bear little resemblance to this case in size, complexity, or scope.  
15 For example, in *In re Volkswagen Litigation*, plaintiffs brought hundreds of individual actions in  
16 multiple district courts across multiple states. *See* Consolidated Consumer Class Action  
17 Complaint, *In re Volkswagen “Clean Diesel” Mktg., Sales Prac., and Prod. Liab. Litig.*, 3:15-  
18 md-02672-CRB (N.D. Cal. Feb. 22, 2016) (ECF No. 1230). Here, in contrast, Plaintiffs propose  
19 to consolidate only eight cases, all pending in the same district. Therefore, an eight-firm  
20 executive committee is unnecessary—particularly in light of the qualifications of interim  
21 Proposed Co-Lead Counsel, who are well-equipped to manage this case on their own—and would  
22 create inefficiencies that could materially increase the costs of this case.

#### 23 **IV. Conclusion**

24 For the reasons stated above, BANA respectfully requests that the Court consolidate these  
25 cases for pretrial purposes only. BANA further requests that the Court decline to appoint an  
26 executive committee.



1 Dated: February 26, 2021

Respectfully Submitted,

3 By: */s/ Laura A. Stoll*

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Executed: February 26, 2021 */s/ Laura A. Stoll*